



OFFICE OF THE POLICE COMMISSIONER  
ONE POLICE PLAZA • ROOM 1400

February 9, 2010

Memorandum for: Deputy Commissioner, Trials

Re: **Sergeant Charles L. Caines**  
Tax Registry No. 911883  
26<sup>th</sup> Precinct  
Disciplinary Case No. 82841/07

The above named member of the service appeared before Assistant Deputy Commissioner Claudia Daniels-DePeyster on July 1, 2009 and was charged with the following:

**DISCIPLINARY CASE NO. 82841/07**

1. Said Sergeant Charles Caines, assigned to the 33<sup>rd</sup> Precinct, while on-duty, on or about December 15, 2006, in New York County, after having been directed by New York City Police Lieutenant Christopher Ikone, assigned to the 33<sup>rd</sup> Precinct, to comply with a lawful order failed to do so; to wit: said Sergeant was directed to search for and locate a substantial quantity of UF 250 reports, and did fail and neglect to do so.

**P.G. 203-03, Page 1, Paragraph 2**

**COMPLIANCE WITH ORDERS  
GENERAL REGULATIONS**

2. Said Sergeant Charles Caines, as indicated in Specification #1, while on-duty, on or about December 15, 2006, in New York County, was discourteous to New York City Lieutenant Christopher Ikone, assigned to the 33<sup>rd</sup> Precinct: to wit, Respondent stated in sum and substance to said Lieutenant, "That shield doesn't mean shit to me."

**P.G. 203-09, Page 1, Paragraph 2 PUBLIC CONTACT-PROHIBITED CONDUCT**

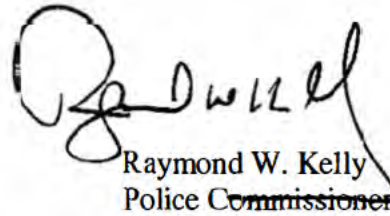
In a Memorandum dated November 23, 2009, Assistant Deputy Commissioner Daniels-DePeyster found the Respondent GUILTY of both Specifications. Having read the Memorandum and analyzed the entire facts of this instant matter, I approve the findings, but disapprove the penalty.

I have considered the totality of issues and circumstances concerning these incidents, including a review of the Respondent's prior performance and disciplinary history.

**SGT. CHARLES CAINES**

**DISCIPLINARY CASE NO. 82841/07**

As such, in addition to the forfeiture of 30 Vacation days, as was recommended, Respondent Caines is also DISMISSED from the New York City Police Department; however, this penalty of dismissal will be held in abeyance pursuant to Section 14-115 (d) of the NYC Administrative Code for a period of one year, during which time the Respondent will remain on the force at the Police Commissioner's discretion and may be terminated at any time without a further hearing.



Raymond W. Kelly  
Police Commissioner





POLICE DEPARTMENT

November 23, 2009

MEMORANDUM FOR: Police Commissioner

RE: Sergeant Charles L. Caines  
Tax Registry No. 911883  
26 Precinct  
Disciplinary Case No. 82841/07  
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P.G. 203-09, Page 1, Paragraph 2 PUBLIC CONTACT  
PROHIBITED CONDUCT

The Department was represented by Penny Bluford-Garrett, Esq., Department Advocate's Office, and the Respondent was represented by John D'Alessandro, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject Charges. A stenographic transcript of the trial record has been prepared and is available

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for the Police Commissioner's review.

### DECISION

The Respondent is found Guilty.

### SUMMARY OF EVIDENCE PRESENTED

#### The Department's Case

The Department called Captain Christopher Ikone as its sole witnesses.

#### Captain Christopher Ikone

Ikone is an over 18-year member of the Department currently assigned to the Housing Bureau Bronx/Queens Impact Response Team. He stated that he has been assigned to that command for approximately six months. Prior to that he was the Executive Officer of Police Service Area No. 8 and prior to that he was a lieutenant in the 33 Precinct.

On the incident date, December 15, 2006 Ikone was a lieutenant in the 33 Precinct and was working 10:00 a.m. to 6:30 p.m. He testified that he had an interaction with the Respondent over the accountability of some UF 250s.<sup>1</sup> Ikone explained that the reports have been a topic of concern regarding racial profiling and the amount of minorities stopped by not only this Department, but also by police departments nationwide. He further explained that two years ago, the 33 Precinct established a procedure to track and log UF 250 reports. He stated that once a police officer stops someone, he or she fills out the card and answers several questions. The form is usually completed at the end of the

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<sup>1</sup> Ikone defined UF 250s as the Police Department's Stop Question and Frisk cards that are filled out whenever an individual is stopped by a uniformed member of service.

day and placed in a box at the command. A supervisor, usually the desk officer, reviews, signs and forwards the cards to the appropriate administrative staff who logs them and then inputs the information into the computer. Several copies of the card are made. The original goes to the criminal records sections, one copy goes to the "Detective Unit," and the other copy is stored in the command.

Ikone testified that on the incident date he was the operations coordinator. He walked into his office and found a stack of UF 250s on his desk. He inquired as to who placed them there and a clerical person informed him that they needed to be signed. He had the person divide the cards into platoons so that a supervisor from each platoon could sign the cards. Ikone said that he had several cards for the third platoon. Since the platoon was changing, he looked at the roll call and realized that he had three sergeants working the third platoon, the Respondent, Sergeant Farrell and Sergeant Hutchins. He decided to assign the cards to Hutchins since the Respondent was the desk officer and had several responsibilities at the beginning of his tour. The other two sergeants were assigned to patrol. He also wanted Hutchins to perform other administrative duties for him such as completing next year's vacation selections.

Ikone stated that he handed approximately 50 UF 250s to Hutchins. Hutchins began flipping through them and remarked that many of the members that completed the UF 250s are assigned to specialty units. Ikone said that he understands that, however they have to be signed. Approximately 45 minutes later, Hutchins handed him less than ten of the UF 250s. Ikone questioned him about the rest of them and Hutchins said he did not know what happened to them. The Respondent who was seated at the desk stated that he took care of them. Ikone inquired where they were and the Respondent said that he

put them in Ikone's mailbox. Ikone proceeded to his mailbox. He explained that the mailboxes are a series of slide-in boxes with names on them. He checked his mailbox and there were no UF 250s in there. He checked to see if the Respondent might have placed them in the wrong mailbox, but there were no UF 250s there.

Ikone testified that he went back to the desk and asked the Respondent to show him where he placed the UF 250s. He said the Respondent, who was making command log entries at the time, got up abruptly. He walked over to the operations coordinator's mailbox and said he put them in there. Ikone inquired about their whereabouts and the Respondent spread his hands out wide and replied, "Listen, there are 150 other police officers in here. I don't know where they are. I'm not responsible for them once I put them in your box," he then turned and walked away. As the Respondent proceeded back to the desk, Ikone said that he told the Respondent to locate Hutchins and make a concerted effort to locate the UF 250s. Ikone said that the Respondent, however, went back to the desk, continued to make command log entries and was "indifferent" to the need to locate the UF 250s. Ikone said that the Respondent repeated a number of times that it was not his responsibility after he put them in the mailbox and he was not going to look for them.

Ikone said that he went behind the desk and the conversation between him and the Respondent continued. It became "elevated in speech." Ikone stated that he placed the few UF 250s that he had on top of the command log and the Respondent said, "Are you reaching for the Taser? I hope you are reaching for the Taser." Ikone testified that he did not know what the Respondent was referring to. He explained that the Taser was located in a drawer to the side of the desk but he never opened that drawer. Ikone said he ordered

the Respondent several times to locate the UF 250s and he “absolutely did not” comply with his order.

Ikone testified that the ramifications for not being able to locate the UF 250s are immeasurable. He explained that in today’s climate of racial profiling, the Department and the officers who filled out the UF 250s could face civil liability issues. In addition, “the federal government can be involved with civil rights violations.” Ikone stated that the UF 250s were not pre-serialized. He explained that once the UF 250s are submitted, they are logged in and a spread sheet is created with several captions which include the date, time, location and the person stopped. Without having the UF 250s, there is no way to really track them if they are not logged in.

Ikone estimated that there were between 10 to 20 people in the vicinity of the front desk at the time he was having the disagreement with the Respondent. He explained that it was the beginning of the third platoon and that the second platoon members were leaving the station house. Ikone said that he and the Respondent decided to go into the property room so that other police officers could not hear what was transpiring. Ikone stated that he continued to tell the Respondent to locate Hutchins and find the UF 250s, but the Respondent repeatedly refused to do so.

Ikone testified that he, along with the Respondent and Sergeant Farrell were in the property room. The Respondent became very irate, aggressive and he was shaking his hand in close proximity to Ikone. Ikone stated that he and the Respondent were both in full uniform. The Respondent then pointed directly at Ikone’s shield and stated, “that shield don’t mean shit to me.” Ikone said he was awestruck by what had just transpired. He decided to leave the property room and call the duty captain.

Farrell followed behind him and depressed the button on the telephone receiver, ending Ikone's call to the duty captain. Ikone explained that Farrell was a senior sergeant and a Sergeants Benevolent Association delegate. He told Farrell not to ever disconnect his phone call again. Ikone stated that he then brought Farrell and the Respondent into the commanding officer's office where he shut the door. He then advised the Respondent to listen to what he had to say and that he would give the Respondent an opportunity to comment afterwards. However, the Respondent began to talk over him and to interject in a discourteous manner. Ikone stated that he then dismissed the Respondent from the room and then spoke solely to Farrell. Ikone said he informed Farrell that he thought about what had just occurred and that he was going to call the commanding officer.

Ikone stated that he contacted Captain Joseph Dowling the Commanding Officer. Dowling informed him that he would arrive at the command in approximately two to three hours and that for him to standby so that they could make a decision on what to do. The outcome was that the Respondent was issued a Schedule B Command Discipline.<sup>2</sup> Ikone stated that some time later during the tour he did receive a number of UF 250s from Farrell but he would never know if they were the total amount of UF 250s that he turned over to Hutchins. He stated that he did not count the UF 250s, but he estimated that during the course of the evening he received about 75% of the UF 250s that he wanted signed. He said that Hutchins received a Schedule A Command Discipline and a loss of several vacations days for his role in the loss of the UF 250s. Ikone stated that as he reflects on the situation he had with the Respondent, he should have suspended him for his conduct. He stated that this was his first experience with someone failing to

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<sup>2</sup> Captain Joseph Dowling is now a Deputy Inspector.



comply with one of his orders. He also stated that the incident that occurred at the front desk with the Respondent lasted between one and two minutes.

During cross-examination, Ikone acknowledged that the Police Department puts a high priority on the UF 250s. He acknowledged that he was concerned when they could not be located. He denied that he was upset, but he acknowledged that he along with other supervisors could be held responsible for their absence. When asked whether he thought it was unreasonable for the Respondent to think that after he put the UF 250s in Ikone's mailbox, he was no longer responsible for them, Ikone said, "That was unreasonable." He explained that he did not give the responsibility to sign the UF 250s to the Respondent. He asserted that once the Respondent took on the task of signing some of the reports, he became responsible to insure that the UF 250s were returned to him. He further explained that if the Respondent was concerned about the UF 250s and getting them signed, he should have been just as concerned once they went missing, but instead, the Respondent was indifferent.

Ikone acknowledged that he gave the Respondent the order to locate or find the UF 250s. He admitted that the Respondent instead went back to the desk. He admitted that the Respondent did have duties as the desk officer; however, he stated that it did not prevent the Respondent from complying with his order. Ikone noted that there were two patrol sergeants still in the station house who were not ready to leave for patrol and they could have covered the desk while the Respondent located the UF 250s and sought out Hutchins to assist him. Ikone also noted that the Respondent did not go back to the desk to look for the UF 250s, but instead continued to make command log entries while seated at the desk. Ikone acknowledged that he did not give the Respondent an order to cease

everything that he was doing and find the UF 250s. He did state, however, that he told the Respondent on multiple occasions to find the UF 250s and the Respondent's response was that it was not his responsibility. Ikone admitted that his voice was raised and elevated as he spoke to the Respondent in a stern instructional tone, but he denied using profanity. When questioned as to whether a better order would have been to ask the Respondent to look for the UF 250s, Ikone responded, "It could be but that's not the terminology that I used."

During redirect examination, Ikone stated that Farrell came up to him and handed him the residual UF 250s. He stated that at the time the Respondent was making the command log entries he was supposed to be looking for the UF 250s.

During further cross-examination, Ikone was asked whether he should have relinquished the Respondent from his desk duties so he could solely look for the UF 250s. Ikone responded that there were several supervisors working and if the Respondent thought he needed someone to cover the desk for him he could have done that on his own.

During questioning by the Court, Ikone stated that his duties as an operations coordinator were similar to the responsibilities of the administrative lieutenant. He was third in command at the station house. His functions included running of the building, maintenance, supervising civilian members of the service, taking care of court appearances and the overall administrative function of the physical operation of the

station house. He stated that he had no prior problems that he could recall with the Respondent.<sup>3</sup>

### The Respondent's Case

The Respondent called Lieutenant Jeffrey Grieco and testified in his own behalf.

#### Lieutenant Jeffrey Grieco

Grieco is assigned to Internal Affairs Bureau (IAB) Group 10. He testified that on December 15, 2006, he was the integrity control officer at the 33 Precinct. He was advised when he reported to work by Ikone that there were a number of UF 250s missing and that he had an argument with the Respondent in regard to that. Grieco stated that he conducted an investigation and spoke to Ikone, the Respondent, Farrell, and Hutchins. He also recalled that he told the Respondent that the UF 250s had to be located and that he impressed upon him the importance and the amount of liability that could occur if the UF 250s remained missing. He also stated that he told Farrell as well as Hutchins to look for the UF 250s and his request to all three sergeants was considered to be an order.

Grieco was asked, if a supervisor is on the desk and a higher ranking supervisor wants that supervisor to do something, rather than abandon his post, should not the supervisor on the desk be relieved of his desk duties. Grieco stated that it depends on what needs to be done. If the desk officer is ordered to do something that does not require him to leave the precinct but that he will still remain in the general area of the desk then he does not have to be relieved of his desk duties. He explained that the desk

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<sup>3</sup> Ikone was recalled by the Assistant Department Advocate as a rebuttal witness. He was asked one question, whether during his exchange with the Respondent, he stated in sum in substance, "I don't know what is f - - - ing wrong with you people in this F - - - ing place." Ikone responded, "No."

officer does not necessarily mean he has to sit at a particular seat; he could be in the complaint room, the muster room and still perform his desk duty functions. If the order required the desk sergeant to leave the station house, then he would be required to get relief at the desk. Grieco further stated that if the order required the supervisor to remain on the same floor in the 33 Precinct Station House then signing off at the desk would not be required. However, if the order required him to go to the basement or to another floor then the supervisor would have to sign off at the desk. Grieco said for example, the desk officer may have to check on 61s (arrest reports). It may take ten to 15 minutes to check on the reports but the desk officer still could do the desk sergeant function.

Grieco was asked whether he recalled that the Respondent stated that during the verbal altercation, Farrell suggested that they go to the property room; and that this was in contrast to Ikone who stated that he suggested they take the altercation to the property room. Grieco stated that from what he recalled, all three supervisors suggested that the altercation be moved to the property room which means Farrell, Ikone and the Respondent all suggested that they move the altercation to the property room. Grieco stated that he recalled the Respondent indicating during his Official Department Interview that Ikone was very disrespectful toward him and that he cursed at him and screamed at him during the altercation. He also stated that the Respondent informed him that there were at least 20 police officers present in the command during this altercation. When asked if the Respondent specifically complained that Ikone used profanity towards him, Grieco stated that the Respondent said "Ikone used profanity in the property room." Grieco explained that it is not acceptable behavior to use profanity when dealing with anyone, however, he stated that it is not uncommon at times to use expletives in the

course of doing business. Grieco acknowledged that the Department does not condone the use of profanity.

Grieco was asked whether the Respondent stated on several occasions during his Official Department Interview that he did not refuse to follow Ikone's orders. Grieco explained that although the Respondent made that statement, his actions said something else. He said his actions demonstrated that he did not intend on complying with the order. Grieco said he asked the Respondent if it was a lawful order for him to find the UF 250s and the Respondent replied, "Yes." But then he asked him, what did he do and did he conduct a search and the Respondent's reply was, "No." The Respondent informed him that he did not conduct a search because he went back to the desk to fill out something in the command log. When asked whether the Respondent informed him that the last place he had the UF 250s was at the desk, and that would be a good place to start looking, Grieco responded, "Not that I remember."

Grieco acknowledged that the Respondent stated in his Official Department Interview that the reason he did not have a chance to follow the order was because Ikone was berating him in front of everyone. Grieco stated that he believed this occurred because the Respondent made no action to comply with Ikone's order. Grieco stated that he believed that Ikone's order was to locate and find the UF 250s. When asked whether that was different than "Look for the UF 250s," Grieco stated that it was not and that all three orders had the same effect, "Go find the UF 250s." Grieco explained that trying to differentiate between the terminology used is semantics. He stated that the order was clear to locate the UF 250s. He further explained that the Respondent stated that it was



not his responsibility; however, it was his responsibility to be concerned about what transpired in the station house as the desk sergeant.

Grieco was read a portion of the Respondent's Official Department Interview which stated that the Respondent had gone back to the desk to begin his search. Grieco stated, however, that the Respondent's actions were that he was performing desk sergeant functions rather than doing a search and Ikone also had that perception. When asked whether Farrell stated in his Official Department Interview that Ikone was cursing at the Respondent, Grieco stated that he recalled Farrell saying that the argument was heated and that profanity was being used by both parties.

In conducting his investigation, Grieco stated that he interviewed the parties involved and not the witnesses. He explained that any witness who did not stand by the entire time of the altercation could not add anything to his investigation. He further explained that police officers do not get involved in disputes between supervisors. Therefore, he left his investigation only to include those supervisors who were at the desk and who followed into the property room. Grieco stated that none of the supervisors mentioned that a police officer overheard the entire incident. He also stated that he had no distinct recollection of asking any of the police officers whether they heard the entire altercation. Grieco acknowledged that ascertaining any potential witnesses would have been easy to find out from the list of police officers who were working that night. He also admitted that he could have asked them if they saw or heard anything.

During cross-examination, Grieco acknowledged that he conducted the investigation with regard to the Respondent. He also stated that based on his investigation he concluded that the Respondent failed to comply with an order and was

disrespectful to Ikone. Grieco acknowledged that during the course of his investigation, he interviewed Farrell who was read the Patrol Guide sections regarding giving false and misleading statements. He stated that Ikone was aware that he had to answer questions truthfully and honestly. Grieco was asked if he could recall what Farrell said regarding the Respondent's demeanor in the property room. To refresh his recollection, a portion of Farrell's Official Department Interview was read to him. Grieco acknowledged that his recollection was refreshed and that the Respondent's demeanor was angry and that the Respondent used words such as "shit" and "bullshit" during the altercation in the property room with Ikone. Grieco's recollection was also refreshed that Farrell informed him that Ikone used the "F" word.

Grieco stated that Farrell was the one who actually located the UF 250s and ultimately brought them to his office. He stated that his investigation disclosed that the Respondent never looked for the UF 250s. Farrell informed him that he found the UF 250s.

During redirect examination, Grieco acknowledged that the Respondent stated that he intended to look for the UF 250s. Grieco explained, however, that the fact that the Respondent intended to look for the UF 250s was not important because the member of the service does not have the right to agree or disagree with an order from a supervisor. He further explained what is important is whether he carried out the order. Grieco said that evidence supported that the Respondent did not comply with the order. He said this was based on his investigation in speaking with Ikone, Farrell, Hutchins and the Respondent.

Greico acknowledged that the Respondent stated in his interview that he went back to the mailbox to show Ikone where he had placed the UF 250s. Grieco explained that this had nothing to do with searching for the UF 250s. He stated that pointing to the place that they were last seen is not a search for the UF 250s and that his investigation revealed that the Respondent made no effort to search for the missing UF 250s.

To make it clear, he stated that to look for something the person would have to say, "I looked over here, I looked over there," and there was none of that from the Respondent. Grieco further explained that for the Respondent to have satisfied that he did help in the search, he would have had to inform him that he went back to the desk, rummaged through papers, searched the entire desk and went around to the property room area or some other location, looked in files or something to indicate that he had helped in the search of the UF 250s. He said that his understanding was that the Respondent was dismissive in terms of looking for the UF 250s. Grieco explained that he likes the Respondent personally, however, he has a very dismissive attitude with regard to dealing with supervisors. He tends to be indifferent when given an order to do something. Grieco acknowledged that from the time the Respondent pointed out to Ikone the place in the mailbox where he had placed the UF 250s, Ikone followed him back to the desk and began yelling and that this transpired in a very short period of time.

Upon questioning by the Court, Grieco acknowledged that the Respondent might have said in his Official Department Interview that he planned to comply with the order but that he did not get a chance because of what was transpiring. Grieco also acknowledged that the Respondent said it was not his responsibility to look for the UF 250s. Grieco stated that it was clearly within the desk officer's responsibility to look for

the UF 250s. When given the scenario that a desk officer was at the desk and Ikone came to him and said I cannot find the UF 250s, I need you to locate them, Grieco agreed that the lieutenant gave an order and that the desk officer was responsible to look for the UF 250s even if he had never touched them. He explained that that is the responsibility of being in charge of the command.

During further cross-examination, Grieco stated that as a result of his investigation, Hutchins did receive disciplinary action. He explained that Hutchins received a Command Discipline with a loss of two or three days for failure to safeguard the UF 250s.

#### The Respondent

The Respondent is a 15-year-member of the Department currently assigned to the 26 Precinct. He testified that he has been in the rank of sergeant for seven years. On December 15, 2006, he was assigned to the 33 Precinct as a desk officer. He explained that on that date he was assigned to the 4:00 p.m. to 12:00 a.m. tour and that he came in a half an hour to an hour before his assigned tour to perform some administrative functions. Upon entering the command he ran into Hutchins who was assigned as patrol sergeant during the 4:00 p.m. to 12:00 a.m. tour. Hutchins explained to him that he was given the assignment to sign off on several UF 250s and that there was a large number of them. Hutchins was upset that he had to sign off on them because they were not for his tour. The Respondent informed him that he would take half of them and sign them since he was working at the desk anyway. Hutchins gave them to him, he signed them and put them in Ikone's mailbox, which is the administrative lieutenant's mailbox.

The Respondent stated that he took the desk from the second platoon when they switched tours. About ten minutes later he overheard Ikone speaking to Hutchins asking him where were the other UF 250s. The Respondent said he interjected and stated that he had the other UF 250s and placed them in his mailbox when he was finished with them. The Respondent explained that his duties as desk officer were to be assigned to the operation of the command. He was responsible for prisoners, arrest reports (61s), the 124 complaint room and any other activities within the command. He was responsible for the actual building of the precinct not the boundaries of the precinct. The Respondent said he did not know the exact time that Ikone came back to him but Ikone informed him that he did not see the UF 250s. He asked the Respondent where he had placed them and the Respondent showed him where he placed the UF 250s. Ikone told him that they were not there and the Respondent replied, "I don't know what to tell you. There are 100 something people in here. I don't know what happened to them once I placed them in your box." The Respondent said, Ikone responded, "Well, you and Sergeant Hutchins better find them." The Respondent said he replied, "No problem, okay." He said Ikone then commented, "I don't know what the F is wrong with you people in this precinct." The Respondent said this turned everything around.

The Respondent said he did not know why Ikone was talking to him like that, he must have been venting and so he decided to just walk away. He went back to the desk and was speaking to a sergeant who wanted to sign in but he noticed that the Respondent had been making a command log entry. The Respondent stated that he told the sergeant that he could continue all the while Ikone was behind him continuing to curse him out. The Respondent said he decided not to get involved because there were police officers in



the area, subordinates, other co-workers and people coming in to make police reports. He felt that Ikone was very loud and being very unprofessional. He explained that he did not want to be part of what was taking place.

The Respondent stated that Farrell interjected and got in between them and told them to calm down. He asked Farrell why Ikone was yelling and cursing at him. The Respondent stated that "he asked me to do something" and he told Ikone that he would do it. The Respondent explained that in all his years as a sergeant, he never had anyone speak to him that way. Even people on the street have never spoken to him that way and he felt the reason why CPR is on the side of the vehicle is not just for the public, but how members of the service should treat each other.<sup>4</sup>

The Respondent said that Farrell pulled him into the property room because he did not want the argument to continue in front of police officers, civilians and members of the public. The Respondent stated that his only argument with Ikone in the property room was why Ikone was speaking to him in that manner. He admitted that he stated that he was not responsible for the UF 250s once he put them in the box. But once Ikone told him you and Hutchins have to look for them, he stated, "Okay," but that was immediately followed by Ikone's comment and him ranting. The Respondent estimated that from the time he was behind the desk to the time Ikone continued to curse and yell at him, seven to ten seconds had elapsed. He stated that at one point the argument moved to the property room and then to the commanding officer's office. They argued a little bit more and then it ended. He recalled Farrell asking him to show him the place where he placed the UF 250s. He showed Farrell the box and Farrell stated that he would take care of it and then he resumed his duties at the desk. The Respondent was asked whether he heard Ikone's

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<sup>4</sup> "CPR" is an acronym for Courtesy Professionalism and Respect.

testimony that the Respondent made the comment that his [Ikone's] shield did not mean shit to him. The Respondent stated that he heard the testimony. He was then asked to explain the context of the conversation. He stated that while in the property room, Ikone told him that he was a lieutenant and the Respondent could not talk to him in the way that he was talking. The Respondent replied to Ikone that the moment he disrespected him he was no longer a lieutenant. Ikone began yelling more and he began yelling back at him in defense of what Ikone was saying to him.

The Respondent estimated that when he took Ikone back to the mailbox where he placed the UF 250s and Ikone began cursing, there were three civilians sitting in the roll call room. When they got back to the desk, he estimated that there were 15 people or more walking around. Once the conversation got heated, the people stood around watching to see what was going on. The Respondent stated that he told the same information to Grieco at his Official Department Interview, and Grieco never asked him who witnessed the altercation. The Respondent stated that once Ikone began cursing there was never another discussion about searching for the UF 250s. The Respondent said that Ikone continued to yell and scream at him to the point when he asked him why he was yelling at him. He stated that he never had an opportunity to look for the UF 250s because Ikone was screaming at him. He further stated that he believed that Farrell was the one who actually located the UF 250s because he handed them to Ikone.

During cross-examination, the Respondent was asked whether he had any negative experiences with Grieco. He stated, "Nothing." When asked whether he was dismissive when dealing with supervisors, the Respondent stated that he had never been written up for anything; and that his evaluations did not reflect such, so he had no idea

why Grieco would make such a statement. The Respondent said that he understood the importance of UF 250s and that they document when people are stopped in the street for various crimes. The Respondent was questioned as follows: "Now, you stated earlier that you told Captain Ikone that it wasn't your responsibility to find or locate the UF 250s after you placed them in the mailbox; is that correct? The Respondent replied, "That is incorrect. I stated it wasn't my responsibility to know what happened to them after I placed them in the box." The Respondent was also asked when he took some of the UF 250s to help Hutchins out if that was not his responsibility either. The Respondent replied, "It wasn't my responsibility, but it was just something I felt like doing with a sergeant, another sergeant."

He explained that once he put the UF 250s in the mailbox other people had access to them. He further explained that as far as finding the UF 250s, he planned to find them. When asked what was his purpose of telling Ikone that it was not his responsibility once he put them in the mailbox, the Respondent explained that he just wanted him to know that 150 other people work in the command and he could not say what happened to them. He stated that maybe someone else knew where the UF 250s were. He was asked whether Ikone's question, "Where are the UF 250s now?," was a fair question, the Respondent replied, "It can't be a fair question if I wasn't in that area at that time."

The Respondent was asked whether there ever came a time that he walked away from Ikone. He stated that the point that Ikone began to curse and rant he walked away from him because there was no need for him to respond to Ikone. The Respondent acknowledged that while Ikone was speaking to him he walked away from him. The Respondent was questioned as to whether he told Ikone that it was not his responsibility

to find something that was already placed in Ikone's mailbox. The Respondent stated that that statement was incorrect. He responded, "As I stated before it was not my responsibility to know what happened to them after I placed them in the box." The Respondent was confronted with his statement from his Official Department Interview on page 4 on line 13:

**Question:** While you were in the roll call room... Captain Ikone asked you guys, stated to you, you better find the UF 250s... His comment was you and Hutchins better find these UF 250s or else...

**Answer:** What? I can't remember directly but it was in a disrespectful tone of voice and I said, Well truthfully, Sir, it's not responsibility to find something that I already put in your mailbox.

When confronted with this question and answer the Respondent replied, "If I stated it at the GO-15, then I said it at that time, Yes." When asked whether he was following a lawful order at that time by that statement, the Respondent replied, "If you read a couple of sentences before when he said that I better find them I did say okay." The Respondent was asked whether he located the UF 250s and he stated that he did not because Ikone started to curse at him. The Respondent was asked when he went back to the desk did he look for the UF 250s or make an entry into the Command Log. He stated that his intention was to look for the UF 250s. The Respondent was then again confronted with a statement he made to Grieco during his Official Department Interview page 15, line 13:

**Question:** After he directed you to look for the 250s, were you still having a conversation with him?

**Answer:** I wasn't I was actually walking away from him while he was cursing because I didn't feel it was necessary for him to curse at me.

**Question:** Okay and after you walked away what did you do?

**Answer:** I walked back to the desk.

**Question:** And did what?

**Answer:** I went to finish up some of my desk assignments.

The Assistant Department Advocate asked the Respondent again whether he went back to his desk to search for the UF 250s or whether he went back to the desk to complete his desk assignment and the Respondent replied, "As I stated earlier I had not finished making an entry in the Command Log. I went to finish the entry upon finishing it I was going to begin searching for the UF 250s if you look back I was middle way doing entries when he called me off the desk." The Respondent denied that during his exchange with Ikone he began to ignore him.

With respect to the Taser incident the Respondent stated that the Taser was on the desk not in the drawer as Ikone had stated. He acknowledged that he made reference to the Taser because Ikone had touched it. The Respondent stated that he was not the person who located the UF 250s but he believed Farrell located them. The Respondent was questioned whether he made the statement "Don't disrespect me and try to hide behind the shield." The Respondent replied, "No, the comment that I said was the moment you disrespect me, you are no longer a lieutenant." He denied making any statement about Ikone's shield not meaning anything to him. The Respondent was asked whether he made a statement regarding the shield during his Official Department Interview with Grieco and he stated that "it was a possibility." He was read a statement from his Official Department Interview:

**Question:** Okay. Was there a point in time when you stated to Lieutenant Ikone verbatim, did you point at him and say, "That shield don't mean shit to me?"



**Answer:** “What I stated to him was once you disrespect me, don’t go back and try to hide behind your shield. He yelled at me as a man. He should deal with me as a man. That shield on your chest means nothing once you disrespect me.”

When asked whether he made this statement during his Official Department Interview, the Respondent stated, “that it was a possibility.” He denied making the statement, “Your shield doesn’t mean shit to me.” The Respondent acknowledged that he heard Grieco testify and he heard the statement alleged to be made by Farrell that he heard the Respondent use the word “shit” or “bullshit.” The Respondent explained that he used the word “bullshit” when referring to Ikone yelling at him and being disrespectful. The Respondent acknowledged that he had been cursing during the exchange.

The Respondent was asked what does the New York City Police Department shield mean to him and he replied, “Respect.” He was asked to explain how on the one hand the shield means respect, but on the other hand the shield does not mean anything. The Respondent explained that a lieutenant was disrespecting him by cursing and yelling at him in front of civilian and other police officers and then in the same breath challenging him to the fact that he was a lieutenant. The Respondent stated that he could not speak to him like that and that is what he was referring to. When asked in hindsight should he just have followed the order to locate the UF 250s, the Respondent replied. “I did follow the order.” The Respondent acknowledged that he is in the military, and that he knows the importance of following orders. He also admitted that he knows the Police Department is a paramilitary organization and that he must comply with orders as well.

He denied ever having any problems with Ikone; or having Ikone yell or get upset with him prior to December 15, 2006.

During redirect examination, the Respondent stated when Ikone asked him, "Where are the UF 250s now?" he took that as an accusation. He said that Ikone followed that statement with, "I don't know what's wrong with you F- - -ing people in this place." He stated that he was given a direct order but he had no reason to converse with him any further especially since he was being disrespectful. The Respondent said he felt that Ikone was overreacting by yelling and cursing, even though he understood that he was responsible for the UF 250s. The Respondent stated that he made the comment about the Taser because Ikone was yelling and cursing. He said he would not go so far as to suggest that Ikone was going to use the Taser against him. The Respondent acknowledged that Grieco stated that both the Respondent as well as Farrell indicated that Ikone was cursing at the Respondent. The Respondent stated that Ikone testified that he had not cursed at the station house.

Upon questioning by the Court, the Respondent was asked why he used the term, "blew him off," to Ikone. He explained that he meant that he was going to follow his order and it was not that he blew him off and did not follow his order and two hours later Ikone got mad at him. He denied ever using the term "blowing him off," when referring to Ikone. He stated that he never blows off the orders of a supervisor. the Respondent stated that aside from saying this is 'bullshit' when referring to the way Ikone was speaking to him, he never used any other profanity during the exchange with Ikone. He stated that although Ikone continued to curse at him, he never cursed back at him. He denied that Ikone used profanity during his everyday conversation. He stated that he was

always professional when dealing with him as well as other supervisors. He explained that the type of conversation they were having on the incident date was not normal conversation for Ikone. The Respondent was asked whether he reviewed the UF 250s recovered by Farrell. He stated that he did not review them and he could not determine whether they were the UF 250s that he signed or the ones signed by Hutchins. He stated that he later learned from Farrell that the UF 250s recovered were the ones that he [the Respondent] had signed.

### FINDINGS AND ANALYSIS

#### Specification Nos. 1 and 2

The Respondent stands charged under Specification No. 1 with failing to comply with a lawful order from New York City Police Lieutenant Christopher Ikone. Specifically, the charge is that: "Said sergeant was directed to search for and locate a substantial quantity of UF 250 reports, and did fail and neglect to do so." The Respondent is also charged under Specification No. 2 with being discourteous to New York City Police Lieutenant Christopher Ikone in that he stated to him in sum and substance, "That shield doesn't mean shit to me." The Respondent is found Guilty as charged.

Evidence adduced at trial established that Ikone assigned the responsibility to sign off on UF 250s to Sergeant Hutchins. The Respondent, hearing Hutchins complain about the reports offered to sign some of them for him. When Ikone came looking for the UF 250s, the Respondent informed him that he had signed off on them and placed them in his mailbox.

When Ikone checked his mailbox, he could not locate them and approached the Respondent. The Respondent at his request, went over to the mail area and showed Ikone where he placed the reports. When Ikone inquired about where the reports were, the Respondent retorted, "Listen, there are 150 other police officers in here. I don't know where they are. I'm not responsible for them once I put them in your box." He then turned and walked away. Ikone testified that as the Respondent walked away from him, he told him to find Hutchins and make a concerted effort to locate the reports. Instead, the Respondent went back to the desk and made command log entries.

Ikone described the Respondent as being "indifferent" to his directive. Ikone stated that he went back to the desk and spoke with the Respondent and the conversation became heated. He said that he told the Respondent several times to locate the UF 250s and the Respondent "absolutely did not comply" with his order and repeatedly told him that it was not his responsibility.

Ikone stated that he decided to move the matter from the front desk to the property room so that other police officers would not hear what was transpiring. Ikone said that the Respondent became very irate and aggressive and was shaking his hand in close proximity to him. Ikone testified that as he and the Respondent stood in full uniform in the presence of Sergeant Farrell<sup>5</sup>, the Respondent pointed directly at his [Ikone's] shield and said, "that shield don't mean shit to me." Ikone said that in retrospect, he should have suspended the Respondent for his conduct. Ikone stated that he contacted the Commanding Officer of the 33 Precinct who decided to issue the Respondent a Schedule B Command Discipline.

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<sup>5</sup> Farrell was not called as a witness by either side.

Grieco, the integrity control officer who investigated this matter was called as a witness by the Respondent. He stated that his investigation, which included speaking with the Respondent, Ikone and two other sergeants, revealed that the Respondent made no effort to comply with Ikone's order. For one, Grieco stated that he interviewed the Respondent and asked him whether the order to locate the UF 250s was a lawful order from Ikone and the Respondent replied, "Yes." Grieco then asked him if he commenced the search for the reports and the Respondent replied, "No." Grieco stated that he asked all three sergeants involved in the incident to locate the UF 250s. He eventually received them from Farrell who located them.

The Respondent contended that after he showed Ikone the mailbox where he placed the signed UF 250s, Ikone began to curse. He said, "I don't know what the F is wrong with you people in this precinct." The Respondent said that things turned around at that point. He walked away from Ikone because he believed he was venting. He stated that once at the desk, he spoke to a sergeant and did not want to get involved in the unprofessional behavior that Ikone was engaged in. The Respondent claimed that he never refused to comply with Ikone's order, he just never got a chance to comply because as he tried to finish his command log entry and speak to another sergeant at the desk, Ikone continued to vent.

The Respondent also admitted that he used the word, "bullshit" but only in reference to Ikone's conduct, not to his order. He denied ever making the shield comment as Ikone alleged. The Respondent did state, however, that he told Ikone in sum and substance that he stopped being a lieutenant the minute he became discourteous.



The facts of this case indicate that the Respondent failed to comply with Ikone's order to locate the UF 250s. The Respondent's best defense was that he was allowing Ikone to vent which delayed his search for the UF 250s. This is not a valid defense. The Respondent is bound by the tenets of the general employment law principle of "obey now, grieve later." This principle requires an employee to promptly obey an order, even if he or she disagrees with it and then he or she can subsequently resort to the grievance process. Ferreri v. New York Thruway Authority, 62 N.Y.2d 855, 477 N.Y.S.2d 616 (1984). There are narrow exceptions to the rule which are inapplicable here particularly since the Respondent acknowledged during his Official Department Interview that the order given by Ikone to locate the UF 250s was a lawful order. The fact that the Respondent did not like the continued discussion Ikone was having with him that accompanied the order is not a basis to fail to comply with the order. The notion behind the rule is to insure a smooth functioning labor force, particularly critical to the operation of the Police Department, a paramilitary organization where the chain of command demands a swift, disciplined and responsive work force to comply with orders to protect the public safety and the safety of its employees. The fact that the Respondent told Ikone repeatedly that looking for the UF 250s was not his responsibility was further evidence that he was not going to comply with the order to search for them.

The evidence in this case also supports a finding that the Respondent was discourteous to Ikone. Ikone testified before this Court and the Court believes his testimony when he stated that the Respondent pointed to his shield and stated in sum and substance, "That shield doesn't mean shit to me." Although at trial the Respondent tried to deny making the statement and would only admit to saying that once Ikone was

discourteous he was no longer considered a lieutenant; he in essence made a tacit admission at trial. During direct examination he was told about the shield remark and asked to explain the context of the conversation. Rather than state that the shield remark never occurred, the Respondent stated that Ikone told him he was a lieutenant and the Respondent could not speak to him in that manner and the Respondent replied that Ikone was discourteous and no longer considered a lieutenant. In addition, during his Official Department Interview with Grieco, the Respondent did not deny making the statement. In fact, he stated that in addition, the Respondent's continued discourtesy, which included not only walking away from Ikone as he was being spoken to, but also doing desk duties instead of complying with the repeated order to look for the UF 250s and using profanity toward the lieutenant only made matters worse. The Respondent further exacerbated the situation by repeatedly stating that it was not his responsibility as he sat as the desk officer of the 33 Precinct Station House on that date.

Accordingly, I find the Respondent Guilty of Specification Nos. 1 and 2.

#### PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). The Respondent was appointed to the Police Department on February 28, 1994. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found Guilty of failing to comply with a lawful order of New York City Police Lieutenant Christopher Ikone to locate a substantial number of UF 250s. He has also been found Guilty of being discourteous to the lieutenant. The Assistant Department Advocate recommended a penalty of the forfeiture of 30 vacation days. To support this recommendation, the Assistant Department Advocate cited several cases. In Disciplinary Case No. 81725/06, a nine-year member of the Department with no prior discipline forfeited 30 vacation days for yelling at his supervisor, pointing at him, moving toward him in a confrontational manner and calling him a liar as the supervisor questioned him about his assigned post. In Disciplinary Case No. 80615/05, a 13-year member of the Department with no prior disciplinary record forfeited 30 vacation days for yelling and pointing his finger at a sergeant's face in front of other members of the service after the sergeant told him to move his private vehicle parked in an RMP parking space. In that case, the Respondent told his commanding officer that the sergeant had an attitude and would regret telling him to move his vehicle.

In this matter, the Respondent failed to comply with an order after repeatedly being told by Ikone to do so. He walked away from Ikone, continued to do other work, and uttered that it was not his responsibility, all of this transpiring at the front desk with members of the public present and several members of the service present during a platoon change. In addition, when the altercation was moved into the property room, the Respondent continued to be discourteous, pointed at Ikone, and used profanity toward him in the presence of another supervisor. Ikone said the Respondent pointed at his shield in close proximity to him and uttered words to the effect, "That shield doesn't mean shit to me."

Based on the foregoing conduct of the Respondent, a supervisor who should know better and understand the importance of "obey now, grieve later," I recommend that he forfeit 30 vacation days.

Respectfully submitted,

*Claudia Daniels-DePeyster*

Claudia Daniels-DePeyster  
Assistant Deputy Commissioner – Trials




POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
SERGEANT CHARLES L. CAINES  
TAX REGISTRY NO. 911883  
DISCIPLINARY CASE NO. 82841/07

The Respondent was rated "4.0" "Highly Competent" in 2008, "3.5" "Above Competent" in 2007 and "3.0" "Competent" in 2006 in his last three performance evaluations, respectively. The Respondent received a negative annual evaluation in 2001 which was low in performance areas and behavioral dimensions. The Respondent also received a negative performance evaluation in 2007 which was low in behavioral dimensions. To date, the Respondent received two Excellent Police Duty Medals and two Meritorious Police Duty Medals in his career. [REDACTED]  
[REDACTED]

In August 2000, the Respondent, while a police officer, received Charges and Specifications for failing to maintain a valid New York State driver's license as required. He received a penalty of the forfeiture of ten vacation days. In May 2001, while a police officer, the Respondent received Charges and Specifications for failing to perform his duties while the subject of a random integrity test. The Respondent pleaded Guilty to responding to a job without his partner and assigned RMP and stopping at a store on the way to the job. He received a penalty of the forfeiture of 15 vacation days.

For your consideration.

  
Claudia Daniels-DePeyster  
Assistant Deputy Commissioner – Trials





**OFFICE OF THE POLICE COMMISSIONER**

ONE POLICE PLAZA • ROOM 1400

February 9, 2010

CHAN

**Memorandum for:** First Deputy Commissioner  
**Attention:** Chief of Personnel

**Subject: ADMINISTRATIVE TRANSFER OF A UNIFORMED MEMBER  
OF THE SERVICE**

1. **Sgt. Charles Caines, Tax # 911883**, was recently the subject of Disciplinary Case No. 82841/07.
2. Separate and apart from the disciplinary process, the Police Commissioner also mandates that Sgt. Caines be immediately transferred to a Patrol Services Bureau Precinct enforcement command located in Patrol Borough Queens North.
3. Further, Sgt. Caines will not be the subject of any future transfer without the explicit approval of the Police Commissioner.
4. Forwarded for necessary attention.

**BY DIRECTION OF THE POLICE COMMISSIONER**

Michael E. Shea  
Assistant Chief  
Commanding Officer  
Police Commissioner's Office